

E-FILED on 09/30/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANTHONY DANIEL GONZALES,

Petitioner,

v.

JAMES E. TILTON, Secretary of California
Department of Corrections,

Respondent,

and

EDMUND G. BROWN, the Attorney General
of the State of California

Additional Respondent.

No. CV-08-03378 RMW

ORDER DENYING PLAINTIFF'S REQUEST
FOR APPOINTMENT OF COUNSEL
WITHOUT PREJUDICE

Docket No. 4

Petitioner, a California state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 16, 2008, petitioner filed a motion for appointment of counsel. For the reasons set forth below, the court DENIES petitioner's motion for appointment of counsel (docket no. 4) without prejudice.

DISCUSSION

Petitioner requests appointment of counsel. However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S. C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to


1 represent a habeas petitioner if “the court deter mines that the interests of justice so require,” the
2 courts have made appointment of counsel the exception rather than the rule. Appointment is
3 mandatory only when the circumstances of a particular case indicate that appointed counsel is
4 necessary to prevent due process violations. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
5 Cir.1986).

6 Pursuant to a recommendation by the Sixth District Appellate Program, to the Sixth District
7 Appellate Court, counsel was provided in petitioner's former appeal. Mot. to App. *see* Decl. at 4.
8 Petitioner's counsel of record in that appeal felt compelled to submit petitioner's federal writ of
9 habeas corpus with this court and to seek appointment of counsel on petitioner's behalf. *Id.*

10 At present, the court has yet to review the merits of the petition. Since the petition has
11 already been filed, the court denies the motion for appointment without prejudice. The court will
12 reconsider the request on its own motion after review of the petition and evaluation of the factors
13 that justify appointment. The court will review the claims set forth in the petition in a separate
14 written order.

15 IT IS SO ORDERED.

16
17
18 DATED: 09/30/09



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Petitioner:**

3 Steven Schorr sschorr@san.rr.com

4 **Counsel for Respondent:**

5 (No appearance)

6 Counsel are responsible for distributing copies of this document to co-counsel that have not
7 registered for e-filing under the court's CM/ECF program.

8
9 Dated: 09/30/09 JAS
10 Chambers of Judge Whyte